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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,367	11/29/2000	Lawrence N. Chapman	PD-990258	5294

20991 7590 03/20/2006

THE DIRECTV GROUP INC
PATENT DOCKET ADMINISTRATION RE/R11/A109
P O BOX 956
EL SEGUNDO, CA 90245-0956

EXAMINER

MA, JOHNNY

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/726,367

Applicant(s)

CHAPMAN ET AL.

Examiner

Johnny Ma

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

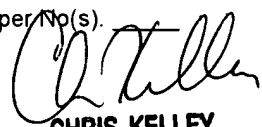
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-34.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


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Continuation of 3. NOTE: New claims 35-38 would require further search and consideration. Please see attached..

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/15/2006 have been fully considered but they are not persuasive.

Applicant argues that “[t]he Final Office Action first defines a ‘channel’ as a ‘band of frequencies’ then argues that a satellite broadcasting information on a ‘band of frequencies’ is broadcasting on a ‘satellite broadcast channel.’ This argument is erroneous because it relies on a definition of a ‘channel’ is at best, incomplete and at worst, incorrect.” Applicant further argues the meaning of “service channel” as applied to Frequency Division Multiple Access (FDMA) systems. However, the examiner respectfully disagrees. It is noted that MPEP § 2111.01 states:

*While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re American Academy of Science Tech Center, **>367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004)< (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.). This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); Chef America, Inc. v. Lamb-Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say....*

In the instant Application it is noted, and Applicant does not argue to the contrary, that Applicant's specification does not provide a clear definition for a “service channel.” Thus the term “service channel” was interpreted as broadly as the term reasonably allows. “Channel” is

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defined as “[a] band of frequencies” (see The Authoritative Dictionary of IEEE Standards Terms, 7th Edition). Thus, the satellite broadcast channel as discussed in the previous Office Action is a band of channels used by satellites to broadcast services, it is unclear why such a definition is inconsistent with a service channel, a channel that provides services. Applicant further argues that “[t]he Applicants claims recite a ‘service channel’ ...not a ‘channel’ and not the Final Office Action’s ‘satellite broadcast channel.’” However, Applicant has not set out a special definition with regard to a service channel in the specification nor in the claims. Therefore, as discussed above, the term “service channel” was interpreted as broadly as the term reasonably allows and was read to equate to a satellite broadcast channel, transmission via satellite.

Applicant also argues that “Klosterman does not teach a system wherein the first and the second signals differ in a fundamental signal characteristic.” In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, it is noted that the satellite broadcast channel refers to all satellite transmissions, in any form, therefore the Examiner respectfully disagrees that different fundamental characteristics cannot be regarded as the same satellite broadcast channel.

Applicant further argues “Klosterman does not teach broadcasting the second program guide information to a subset of subscribers.” To support this assertion, Applicant appears to rely on a portion from Klosterman’s background of the invention. However, it is noted that the cited portion recites “[u]nfortunately, a DBS system normally does not receive local network or local independent channels” (Klosterman 1:45-46). The Klosterman reference does not disclose

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that a DBS system does not receive local network or local independent channels in all circumstances. Furthermore, the remainder of the Klosterman disclosure does not appear to impose this limitation on the Klosterman system. For example, Klosterman discloses “IRD box 28 receives television programs along with other information via, in one embodiment satellite dish 29... Similarly, program guide information can be received through cable box 26, other inputs 30, antennae 34, and/or through any other transmission medium” (Klosterman 4:55-5:4) wherein other transmission medium could include another satellite broadcast (Klosterman 3:4-13).

With regard to the combination of the Klosterman and Eastman reference. Applicant argues that the combination is improper because “Klosterman teaches that when a channel from another satellite is selected, the antenna is slewed to point at the second satellite instead of the first, thus teaching physical diversity between the signals and that the signals do not differ in a fundamental signal characteristic.” The examiner respectfully disagrees. The examiner agrees that the Klosterman reference teaches physical diversity, however the Klosterman reference does not specifically teach away from the use of different fundamental signal characteristics. The use of physical diversity and different fundamental signal characteristics are recognized alternatives by those of ordinary skill in the art as evidenced by the Klosterman and Eastman references.

Applicant also argues that “Klosterman is not combinable with Thomas...Klosterman and Thomas plainly teach away from one another because they entirely different approaches to the same problem.” However, as noted in the previous Final Office Action, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any

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one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case, both the Klosterman and Thomas references are directed to merging program guide information from plural sources wherein it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Klosterman transmission of EPG data with the Thomas et al. centralized segmentation of EPG data for the purpose of providing a central site/source that may parse all relevant program guide information and make such information available for broadcast without requiring each site to compile program data individually.

Applicant argues “Eyer does not disclose broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on the second signal.” In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner respectfully disagrees that Eyer discloses “the second program guide information describing the second set of programs is transmitted on a different service channel (B1 instead of B0). The Eyer reference discloses that the B1 and B0 correspond to data bundles, not channels wherein the bundles are transmitted on the same channel and retrieved via filtering by the decoder (Eyer 10:10-48). Applicant also argues that “the transmission of programs to different regions A, B, and C on channel B1 does not read on claim 34, as those subscribers in regions B are not a subset of the subscribers recited in claim 34, but rather a different set. The examiner respectfully

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disagrees. The Eyer reference discloses transmitting global and regional IPG data to subscribers (Eyer 10:10-20). The global IPG data comprises a set of subscribers wherein the regional IPG data (A, B, and C) comprise a subset of the global subscribers according to region. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



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